

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of Application of	)	
	)	
WORLDCOM BROADBAND SOLUTIONS,	)	File No. BMDP-19961021EQ
INC.	)	
	)	
For Authority to Construct and Operate a	)	
Multipoint Distribution Service Station on the F	)	
Group Channels in New Haven, Connecticut	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: December 6, 2002**

**Released: December 11, 2002**

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* On October 21, 1996, Atlantic Microsystems, Inc. (Atlantic)<sup>1</sup> filed the above-captioned application for a new Multipoint Distribution Service (MDS) station. On December 16, 1996, the Grand MMDS Alliance New York F/P Partnership (Grand Alliance)<sup>2</sup> filed a petition to deny Atlantic's application. On January 14, 1997, CAI Wireless Systems, Inc. (CAI) and Atlantic, a wholly-owned subsidiary of CAI, jointly filed an opposition to Grand Alliance's petition to deny. For the reasons stated herein, we grant the petition to deny and dismiss Atlantic's application.

2. *Background.* On September 9, 1983, Grand Alliance filed an application for authority to construct and operate a new MDS station on the F Group channels in New York, New York.<sup>3</sup> Subsequently, Grand Alliance became the tentative selectee for the F Group channels in New York, New York.<sup>4</sup> CAI, the winning bidder of the New Haven, Connecticut Basic Trading Area (BTA)<sup>5</sup> entered into negotiations with Grand Alliance regarding a lease agreement involving the F Group channels in New York.<sup>6</sup> On October 21, 1996, Atlantic filed the above-captioned application for a new MDS Basic Trading Area (BTA) station in the New Haven-Waterbury-Meriden Connecticut BTA on the F group channels in New Haven, Connecticut.<sup>7</sup> In that application, Atlantic submitted an interference analysis

<sup>1</sup> The application was originally filed in the name of Atlantic Microsystems, Inc. On December 14, 2001, the application was amended to change the applicant to WorldCom Broadband Solutions, Inc. See Letter from Mary N. O'Connor Esq. to Magalie Roman Salas, Secretary, Federal Communications Commission (filed Dec. 14, 2001). Since most of the events in question in this proceeding took place when Atlantic was the applicant, we will refer to Atlantic as the applicant unless the context requires otherwise.

<sup>2</sup> Petition to Deny filed by Grand MMDS Alliance New York F/P Partnership (Dec. 16, 1996) (Grand Alliance Petition).

<sup>3</sup> File No. 5455-CM-P-83.

<sup>4</sup> Grand Alliance Petition at 1.

<sup>5</sup> Winning Bidders in the Auction of Authorizations to Provide Multipoint Distribution Service in 493 Basic Trading Areas, *Public Notice*, (WTB rel. Mar. 29, 1996).

<sup>6</sup> Opposition to Petition to Deny filed by CAI Wireless System Inc. and Atlantic Microsystems, Inc. (dated Jan. 14, 1997) (CAI and AMI Opposition).

<sup>7</sup> File No. BMDP-19961021EQ, Exhibit E. p.3.

showing that its proposed operations would not provide interference protection to the facilities proposed in Grand Alliance's application.<sup>8</sup> Atlantic represented that it would later file an interference acceptance statement from Grand Alliance regarding Atlantic's proposed station.<sup>9</sup>

3. On November 14, 1996, the Video Services Division, Mass Media Bureau placed Atlantic's application on public notice as accepted for filing.<sup>10</sup> On December 16, 1996, Grand Alliance opposed the application by arguing that Atlantic's application must be dismissed for failure to provide interference protection to Grand Alliance's proposed facilities.<sup>11</sup> Additionally, Grand Alliance stated that it did not intend to issue an interference acceptance statement in support of Atlantic's application.<sup>12</sup> On May 6, 1997, Grand Alliance's application was granted.<sup>13</sup>

4. *Discussion.* Section 21.902(b)(3) of the Commission's Rules requires all applicants for MDS stations to provide at least 45 dB of co-channel interference protection within the 56.33 km (35 mi) protected service area of any authorized or previously-proposed Instructional Television Fixed Service or incumbent MDS station.<sup>14</sup> In lieu of providing such protection, applicants may submit a written statement of no objection to the operation of their MDS station.<sup>15</sup> In this case, Atlantic failed to demonstrate that its proposed operations would provide the necessary interference protection to Grand Alliance's station or to submit an interference acceptance statement from Grand Alliance. Moreover, we conducted an engineering analysis that confirms that Atlantic's application does not provide the necessary interference protection to Grand Alliance's F Group channels operations. Further, Grand Alliance has specifically stated that it will not consent to Atlantic's proposed operations.

5. We note that Grand Alliance argues that Atlantic's statement regarding interference acceptance is unfounded and suggests Atlantic has made a bad faith misrepresentation.<sup>16</sup> We disagree. At the time Atlantic filed its application, it was in negotiations with Grand Alliance to lease the F Group channels.<sup>17</sup> Under these circumstances, we believe it was reasonable for Atlantic to believe it could obtain an interference acceptance statement.<sup>18</sup> We note, however, that such possibility does not cure the deficiency in Atlantic's application with respect to the requirements of Section 21.902(b)(3). Accordingly, we will grant the petition to deny and dismiss Atlantic's application as defective.

---

<sup>8</sup> File No. BMDP-19961021EQ, Exhibit E, p.3.

<sup>9</sup> *Id.*

<sup>10</sup> See MMB MDS Public Notice Report No. D-892 (rel. Nov. 14, 1996).

<sup>11</sup> Grand Alliance Petition at 2. CAI and AMI responded to the Petition on January 14, 1997. CAI and AMI Opposition. On January 27, 1997, Grand Alliance requested an extension of time to reply to Atlantic's opposition. Grand Alliance Motion for Extension of Time (Jan. 27, 1997). On February 5, 1997, Grand Alliance filed a reply. Reply filed by Grand Alliance (Feb. 5, 1997).

<sup>12</sup> *Id.*

<sup>13</sup> Call sign WMY467. See MMB MDS Public Notice Report No. D-925-A (rel. May 7, 1997).

<sup>14</sup> 47 C.F.R. § 21.902(b)(3), See also Amendment of Parts 21 and 74 of the Commission's Rules with regard to Filing Procedures in the Multipoint Distribution Service and Instructional Television Fixed Service, *Memorandum and Order on Reconsideration*, 10 FCC Rcd. 13821, 13826-7, ¶¶ 29-30 (1995).

<sup>15</sup> 47 C.F.R. § 21.902(c)(2)(i).

<sup>16</sup> Grand Alliance Petition at 3.

<sup>17</sup> CAI and AMI Opposition at 2.

<sup>18</sup> See, e.g., Fox River Broadcasting, Inc., *Memorandum Opinion and Order*, 93 FCC 2d 127, 129 (1983).

6. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 309, and Section 21.30 of the Commission's rules, 47 C.F.R. § 21.30, the Petition to Deny filed by the Grand MMDS Alliance New York F/P Partnership on December 16, 1996 IS GRANTED.

6. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 309, and Sections 21.30 and 21.902 of the Commission's rules, 47 C.F.R. § 21.30, 21.902, that Atlantic Microsystems Inc.'s application filed on October 21, 1996 IS DISMISSED.

7. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.46 of the Commission's rules, 47 C.F.R. § 1.46, that the Motion for Extension of Time filed by Grand MMDS Alliance New York F/P Partnership on January 30, 1997 IS GRANTED.<sup>19</sup> This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry  
Chief, Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau

---

<sup>19</sup> The Opposition filed by CAI was not received by Grand Alliance until January 24, 1997. *See* Grand Alliance Motion. CAI did not oppose the extension request. *See* Grand Alliance Motion.